

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

METSO MINERALS CANADA INC.
and METSO MINERALS INDUSTRIES,
INC.,

Petitioners,

v.

ARCELORMITTAL EXPLOITATION
MINIÈRE CANADA and
ARCELORMITTAL CANADA INC.,

Respondents.

Case No. 1:19-cv-03379-LAP

DECLARATION OF THOMAS E. RILEY

I, Thomas E. Riley, declare as follows:

1. I am a partner at Herbert Smith Freehills New York LLP, counsel of record for Respondents ArcelorMittal Exploitation Minière Canada s.e.n.c. and ArcelorMittal Canada Inc. ("ArcelorMittal") in the above-captioned action.

2. I submit this declaration in support of ArcelorMittal's Cross-Petition to Vacate Arbitration Award and ArcelorMittal's Opposition to Petition to Confirm Arbitration Award in the arbitration commenced by ArcelorMittal against Metso Minerals Canada, Inc. and Metso Minerals Industries, Inc. (collectively, "Metso"; together with ArcelorMittal, the "Parties") under the auspices of the International Chamber of Commerce (the "ICC") captioned *ArcelorMittal Exploitation Minière Canada and ArcelorMittal Canada Inc. v. Metso Minerals Canada Inc. and Metso Minerals Industries, Inc.*, Case No. 22034/RD/MK (the "Arbitration").

3. I make this declaration based on personal knowledge of the facts set forth in this declaration, which I have acquired in my role as counsel for ArcelorMittal. If called upon to testify, I could and would testify competently thereto.

4. Attached hereto as Exhibit A is a true and correct copy of that certain Contract for Capital Purchase N°4500148475 by and between Metso and ArcelorMittal, dated February 21, 2011.

5. Attached hereto as Exhibit B is a true and correct copy of ArcelorMittal's Request for Arbitration, dated June 14, 2016.

6. Attached hereto as Exhibit C is a true and correct copy of the Terms of References executed by ArcelorMittal, Metso, and the members of the International Court of Arbitration ("ICC") arbitral tribunal (the "Tribunal"), dated January 2, 2017.

7. Attached hereto as Exhibit D is a true and correct copy of the witness statement of ArcelorMittal's witness Bruno Audet, dated May 1, 2017.

8. Attached hereto as Exhibit E is a true and correct copy of the witness statement of ArcelorMittal's witness Guy Laberge, dated May 5, 2017.

9. Attached hereto as Exhibit F is a true and correct copy of the witness statement of ArcelorMittal's witness Tony Robinson, dated May 5, 2017.

10. Attached hereto as Exhibit G is a true and correct copy of ArcelorMittal's Amended Statement of Claim, dated October 3, 2016.

11. Attached hereto as Exhibit H is a true and correct copy of Metso's Statement of Defense, dated October 19, 2017.

12. Attached hereto as Exhibit I is a true and correct copy of the Report of Metso's expert witness Professor Nathalie Vézina, dated October 12, 2017.

13. Attached hereto as Exhibit J is a true and correct copy of Metso's Supplemental Statement of Defense, dated December 11, 2017.

14. Attached hereto as Exhibit K is a true and correct copy of the Report of ArcelorMittal's expert witness Hon. Jean-Louis Baudouin, dated February 13, 2018.

15. Attached hereto as Exhibit L is a true and correct copy of ArcelorMittal's Statement of Reply, dated February 20, 2018.

16. Attached hereto as Exhibit M is a true and correct copy of Metso's Statement of Rejoinder, dated April 24, 2018.

17. Attached hereto as Exhibit N is a true and correct copy of the relevant excerpt from the transcript of day 1 of the hearing in the Arbitration, dated June 4, 2018.

18. Attached hereto as Exhibit O is a true and correct copy of the relevant excerpt from the transcript of day 2 of the hearing in the Arbitration, dated June 5, 2018.

19. Attached hereto as Exhibit P is a true and correct copy of ArcelorMittal's Post-Hearing Brief, dated October 1, 2018.

20. Attached hereto as Exhibit Q is a true and correct copy of Post-Hearing Memorial, dated October 1, 2018.

21. Attached hereto as Exhibit R is a true and correct copy of decision rendered by the Majority of the tribunal, dated March 20, 2019.

22. Attached hereto as Exhibit S is a true and correct copy of the dissenting opinion of Hon. Louise Otis, dated March 20, 2019.

23. Attached hereto as Exhibit T is a true and correct copy of the Supreme Court of Canada's decision in *Banque de Montréal v Bail Ltée*, [1992] 2 SCR 554.

24. Attached hereto as Exhibit U is a true and correct copy of the Supreme Court of Canada's decision in *ABB Inc. v Domtar Inc.*, [2007] 3 SCR 461.

25. Attached hereto as Exhibit V is a true and correct copy of Article 24 of the 2017 ICC Rules of Arbitration and Mediation.

26. Attached hereto as Exhibit W is a true and correct copy of Article 6 of the Québec Civil Code.

27. Attached hereto as Exhibit X is a true and correct copy of Article 7 of the Québec Civil Code.

28. Attached hereto as Exhibit Y is a true and correct copy of Article 1375 of the Québec Civil Code.

29. Attached hereto as Exhibit Z is a true and correct copy of Article 1708 of the Québec Civil Code.

30. Attached hereto as Exhibit AA is a true and correct copy of Article 1726 of the Québec Civil Code.

31. Attached hereto as Exhibit BB is a true and correct copy of Article 2098 of the Québec Civil Code.

32. Attached hereto as Exhibit CC is a true and correct copy of Article 2100 of the Québec Civil Code.

33. Attached hereto as Exhibit DD is a true and correct copy of Article 2102 of the Québec Civil Code.

34. Attached hereto as Exhibit EE is a true and correct copy of Article 2118 of the Québec Civil Code.

35. Attached hereto as Exhibit FF is a true and correct translation of a selection from the legal treatise on the law of Québec, Andrée Laprise and Denis Vaugois (eds.), *The Reform of the Civil Code, Obligations, Nominate Contracts* (Les Presses de l'Université Laval 1993).

36. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 16, 2019
New York, New York

Respectfully submitted,

HERBERT SMITH FREEHILLS
NEW YORK LLP

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